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SENATE BILL 155

50TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2011

INTRODUCED BY

Phil A. Griego

AN ACT

RELATING TO THE ENVIRONMENT; AMENDING A SECTION OF THE SOLID WASTE ACT TO PROVIDE FOR TERM OF PERMITS FOR PRIVATE LANDFILLS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. Section 74-9-24 NMSA 1978 (being Laws 1990, Chapter 99, Section 24, as amended) is amended to read:

"74-9-24. SOLID WASTE FACILITY PERMIT--ISSUANCE AND DENIAL--GROUNDS--NOTIFICATION OF DECISION--PERMIT RECORDING REQUIREMENT.--

A. The director, within one hundred eighty days after the application is deemed complete and after a public hearing, shall issue a permit, issue a permit with terms and conditions or deny a permit application. The director may deny a permit application on the basis of information in the application or evidence presented at the hearing, or both, if

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1 [he] the director makes a finding that granting the permit
2 would be contradictory to or in violation of the Solid Waste
3 Act or any regulation adopted [~~under it.~~ He] pursuant to the
4 provisions of that act. The director may also deny a permit
5 application if the applicant fails to meet the financial
6 responsibility requirements established by the board [~~under~~
7 pursuant to the provisions of Subsection A of Section 74-9-8
8 NMSA 1978 and Section 74-9-35 NMSA 1978.

9 B. The director may deny any permit application or
10 revoke [~~a~~] an existing permit if [~~he~~] the director has
11 reasonable cause to believe that [~~any~~] a person required to be
12 listed on the application pursuant to Section 74-9-20 NMSA 1978
13 has:

14 (1) knowingly misrepresented a material fact
15 in application for a permit;

16 (2) refused to disclose or failed to disclose
17 the information required [~~under~~] pursuant to the provisions of
18 Section 74-9-21 NMSA 1978;

19 (3) been convicted of a felony or other crime
20 involving moral turpitude within ten years immediately
21 preceding the date of the submission of the permit application;

22 (4) been convicted of a felony, within ten
23 years immediately preceding the date of the submission of the
24 permit application, in any court for any crime defined by state
25 or federal statutes as involving or being restraint of trade,

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1 price-fixing, bribery or fraud;

2 (5) exhibited a history of willful disregard
3 for environmental laws of any state or the United States; or

4 (6) had any permit revoked or permanently
5 suspended for cause under the environmental laws of any state
6 or the United States.

7 C. In making a finding under Subsection B of this
8 section, the director may consider aggravating and mitigating
9 factors presented by any party at the hearing.

10 D. If an applicant whose permit is being considered
11 for denial or revocation on any basis provided in this section
12 has submitted an affirmative action plan that has been approved
13 in writing by the director and plan approval includes a period
14 of operation under a conditional permit or license that will
15 allow the applicant a reasonable opportunity to affirmatively
16 demonstrate its rehabilitation, the director may issue a
17 conditional license for a reasonable period of time of
18 operation. In approving an affirmative action plan intended to
19 affirmatively demonstrate rehabilitation, the director may
20 consider the following factors:

21 (1) implementation by the applicant of formal
22 policies;

23 (2) training programs and management control
24 to minimize and prevent the occurrence of future violations;

25 (3) installation by the applicant of internal

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1 environmental auditing programs;

2 (4) the discharge of individuals convicted of
3 any crimes set forth in Subsection B of this section; and

4 (5) such other factors as the director may
5 deem relevant.

6 E. Within sixty days of the date of the closing of
7 the hearing on a permit application, the director shall notify
8 the applicant by certified mail of the issuance, denial or
9 issuance with conditions of a permit and the reasons [~~therefor~~]
10 for it. Any person who has made a written request to the
11 director to be notified of the action taken on the application
12 shall be given written notice of the director's action.

13 F. No permit for the operation of a solid waste
14 facility shall be valid until the permit or a notice of the
15 permit and a legal description of the property on which the
16 facility is located are filed and recorded in the office of the
17 county clerk in each county in which the facility is located.

18 G. Except as otherwise provided by law:

19 (1) each permit issued for a publicly owned
20 and publicly or privately operated new or repermited existing
21 landfill, transfer station, recycling facility or composting
22 facility shall remain in effect throughout the active life of
23 the landfill, transfer station, recycling facility or
24 composting facility as described in the approved permit or for
25 twenty years, whichever is less. Each permit issued for a

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1 publicly owned landfill, transfer station, recycling facility
2 or composting facility that is privately operated pursuant to a
3 contract of no more than four years duration entered into in
4 accordance with the state or local procurement code shall
5 remain in effect throughout the active life of the landfill,
6 transfer station, recycling facility or composting facility as
7 described in the approved permit or for twenty years, whichever
8 is less. Each time the contract is renewed, the director shall
9 review the contract to determine whether the term of the permit
10 shall be governed by this paragraph or Paragraph (2) of this
11 ~~[section]~~ subsection. Each permit shall be reviewed by the
12 department of environment at least once every ten years. The
13 review shall address the operation, compliance history,
14 financial assurance and technical requirements for the
15 landfill, transfer station, recycling facility or composting
16 facility. At the time of the review there shall be public
17 notice in the manner prescribed by Section 74-9-22 NMSA 1978.
18 If the secretary of environment determines that there is
19 significant public interest, a nonadjudicatory hearing shall be
20 held as part of the review. The secretary may require
21 appropriate modifications of the permit, including
22 modifications necessary to make the permit terms and conditions
23 consistent with statutes, regulations or judicial decisions;

24 (2) each permit issued for a privately owned
25 new or repermited existing landfill, transfer station,

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1 recycling facility or composting facility shall remain in
2 effect [~~for ten years or for the active life of the facility,~~
3 ~~whichever is less. Each permit issued for a publicly owned~~
4 ~~landfill, transfer station, recycling facility or composting~~
5 ~~facility that is leased to a private person or that is operated~~
6 ~~by a private person pursuant to a contract of more than four~~
7 ~~years duration shall remain in effect for ten years or for the~~
8 ~~active life of the landfill or facility, whichever is less]~~
9 throughout the active life of the facility as described in the
10 approved permit or for twenty years, whichever is less. Owners
11 of privately owned facilities permitted prior to July 1, 2011
12 shall submit in writing to the division no later than September
13 1, 2011 their decision to opt into the twenty-year permit cycle
14 and provide information that demonstrates that such period is
15 less than the remaining active life of the facility. If a
16 privately owned facility opts into the twenty-year permit
17 cycle, the twenty-year permit term shall be reduced by the
18 number of years the facility has operated under its current
19 permit. For privately owned facilities that opt into the
20 twenty-year permit term, the facility owners shall adjust
21 financial assurance coverage to accommodate requirements
22 pursuant to the solid waste management regulations. Each
23 permit shall be reviewed at least every [five] ten years by the
24 department of environment. Interested parties may petition the
25 department for review, in addition to the [five-year] ten-year

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1 review, provided that the director [~~shall have~~] has discretion
2 to determine whether there is good cause for such an additional
3 review. The review shall address the operation, compliance
4 history, financial assurance and technical requirements for the
5 landfill, transfer station, recycling facility or composting
6 facility. At the time of the review there shall be public
7 notice in the manner prescribed by Section 74-9-22 NMSA 1978.
8 If the secretary of environment determines that there is
9 significant public interest, a nonadjudicatory hearing shall be
10 held as part of the review. The secretary may require
11 appropriate modifications of the permit, including
12 modifications necessary to make the permit terms and conditions
13 consistent with statutes, regulations or judicial decisions;
14 and

15 (3) the term of permits for facilities not
16 specified by this subsection shall be governed by existing or
17 amended regulations adopted by the board.

18 H. The director shall issue separate special waste
19 permits for all solid waste facilities that transfer, process,
20 transform, recycle or dispose of special waste pursuant to
21 regulations adopted by the board."

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